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May 15, 2009

## **BY HAND DELIVERY**

The Honorable Anne K. Quinlan, Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

MAY 15 2009

Part of  
Public Record

225110

Re: ***Cleveland Commercial Railroad Company, LLC – Lease and Operation  
Exemption – Norfolk Southern Railway Company  
STB Finance Docket No. 35251***

Dear Acting Secretary Quinlan:

Enclosed are an original and eleven copies of a Verified Notice of Exemption ("Notice") under 49 CFR 1150.41, pursuant to which Cleveland Commercial Railroad Company, LLC will lease and operate a rail line owned by Norfolk Southern Railway Company. Also enclosed are a caption summary in the prescribed format, and an electronic version of the Notice. Accompanying the Notice are documents tendered in connection with the requirements of 49 CFR 1150.43(h), which documents are highly confidential, have been segregated from the balance of the filing, and are submitted under seal in keeping with the aforementioned regulation and 49 CFR 1104.14(a).

Pursuant to 49 CFR 1002.2(f)(14)(ii), enclosed is a check for \$1,800.00 covering the applicable filing fee. Please acknowledge receipt and filing of the Notice by time stamping the eleventh copy and returning it to the courier for return to me. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7824 or by email: [rwimbish@bakerandmiller.com](mailto:rwimbish@bakerandmiller.com).

Respectfully submitted,

Robert A. Wimbish

Attorney for Cleveland Commercial Railroad  
Company, LLC

Enclosures

Cc: William D. Brown, John M. Scheib

**FILED**

MAY 15 2009

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

MAY 15 2009

**SURFACE  
TRANSPORTATION BOARD**



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35251

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CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY

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ENTERED  
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VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

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BAKER & MILLER PLLC  
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Washington, DC 20037  
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Facsimile: (202) 663-7849

Attorney for Cleveland Commercial  
Railroad Company, LLC

May 15, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35251

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CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.

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Pursuant to 49 U.S.C. 10502 and 49 CFR 1150.41, et seq., Cleveland Commercial Railroad Company, LLC (“CCR”), a Class III rail common carrier,<sup>1</sup> hereby provides notice of its class exemption from the formal requirements of 49 USC 10902 for a transaction wherein CCR will lease from Norfolk Southern Railway Company (“NSR”) and will operate a rail line extending between Milepost RH 2.2+/- at Cleveland, OH, and Milepost RH 27.5+/- at Aurora, OH (“the Line”).

In support of this Notice of Exemption, CCR submits the following information as required by 49 CFR 1150.43:

(a) Full name and address of applicant:

Cleveland Commercial Railroad Company, LLC  
29930 Pettibone Road  
Glenwillow, OH 44139

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<sup>1</sup> See Cleveland Commercial Railroad Company, LLC – Change in Operators Exemption – Wheeling and Lake Erie Railway Company, STB Finance Docket No. 34521 (STB served Aug. 6, 2004).

**(b) Applicant's Representative:**

Robert A. Wimbish  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, DC 20037  
Phone: (202) 663-7824  
Facsimile: 202-663-7849  
Email: [rwimbish@bakerandmiller.com](mailto:rwimbish@bakerandmiller.com)

**(c) Statement that an agreement has been reached or details about when an agreement will be reached:**

CCR and NSR have executed an agreement pursuant to which CCR will lease and operate the Line.

**(d) Operator of the property:**

Upon consummation of the transaction contemplated herein, CCR will operate the property (the Line).

**(e) Summary of the proposed transaction –**

**(1) The name and address of the railroad transferring operating interests in the subject property:**

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

**(2) The proposed time schedule for consummation of the transaction:**

The parties intend to consummate the proposed transaction on or after June 15, 2009.

(3) The mileposts of the subject property, including any branch lines:

CCR will lease from NSR and will operate a rail line segment generally referred to as the “Randall Secondary” between Milepost RH 2.2+/- at Cleveland, OH, and Milepost RH 27.5+/- at Aurora, OH.

(4) The total route miles being acquired:

Approximately 25.3 route miles.

(f) Map:

Attached hereto as Exhibit A.

(g) Certificate of compliance with the provisions of 49 CFR 1150.43(g):

Attached as Exhibit B is a certificate affirming that CCR’s projected revenues as a consequence of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing of this notice under 1150.45.

(h) Interchange commitments:

CCR will interchange traffic with NSR at a track in the vicinity of Von Willer, Yard in Cleveland, OH. However, the lease agreement governing the subject transaction does not prohibit CCR from interchanging with other carriers, and it does not set forth the terms under which CCR may interchange traffic with third party carriers. Indeed, CCR can and does regularly interchange traffic with Wheeling & Lake Erie Railway Company (“W&LE”) at Falls Junction in Glenwillow, OH, and CCR’s lease and operation of the Line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR-W&LE relationship.

CCR believes that the lease agreement it will enter into with NSR does not contain an interchange commitment that would impede CCR’s ability to interchange with third party carriers,

and, for this reason, CCR is of the opinion that the terms of the lease do not need to be disclosed under the Board's rules. Nevertheless, the lease contains a standard rental credit provision, which CCR sought in negotiations to afford CCR greater financial flexibility to, among other things, improve the Line's infrastructure. Out of an abundance of caution and in strict adherence to the requirements of 49 CFR 1150.43(h) (and the confidentiality terms set forth therein), the parties have agreed to submit under seal a confidential and complete version of the lease agreement, subject to 49 CFR 1104.14(a).

Other information and supporting materials:

As indicated above, CCR's projected revenues as a result of the subject transaction would continue to be below the Class II carrier threshold, and, accordingly, CCR will remain a Class III rail carrier. In addition, CCR's projected annual revenues from the combination of its operation of the Line and its existing rail operations will not exceed \$5 million. See the certification attached as Exhibit B. For this reason, CCR is not obligated to comply with the 60-day advance notice and posting requirements set forth at 49 CFR 1150.42(e).

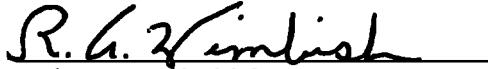
A caption summary in the prescribed form is attached as Exhibit C to this notice.

The proposed transaction is not subject to environmental review because the action proposed herein will not exceed any of the thresholds set forth at 49 CFR 1105.7(e)(4) or (5). See 49 CFR 1105.6(c)(2)(i).

In addition, this transaction is exempt from historic review under 49 CFR 1105.8(b)(1), because the transaction contemplates continued rail operation. Further STB approval would be required for the parties to abandon service, and there are no plans to dispose of or to alter properties

.. subject to STB jurisdiction that are 50 years or older. This action will not significantly affect the quality of the human environment or energy conservation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "R. A. Wimbish", is written over a horizontal line.

Robert A. Wimbish  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, NW  
Suite 300  
Washington, DC 20037

Attorney for Cleveland Commercial  
Railroad Company, LLC

DATED: May 15, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35251**

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**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

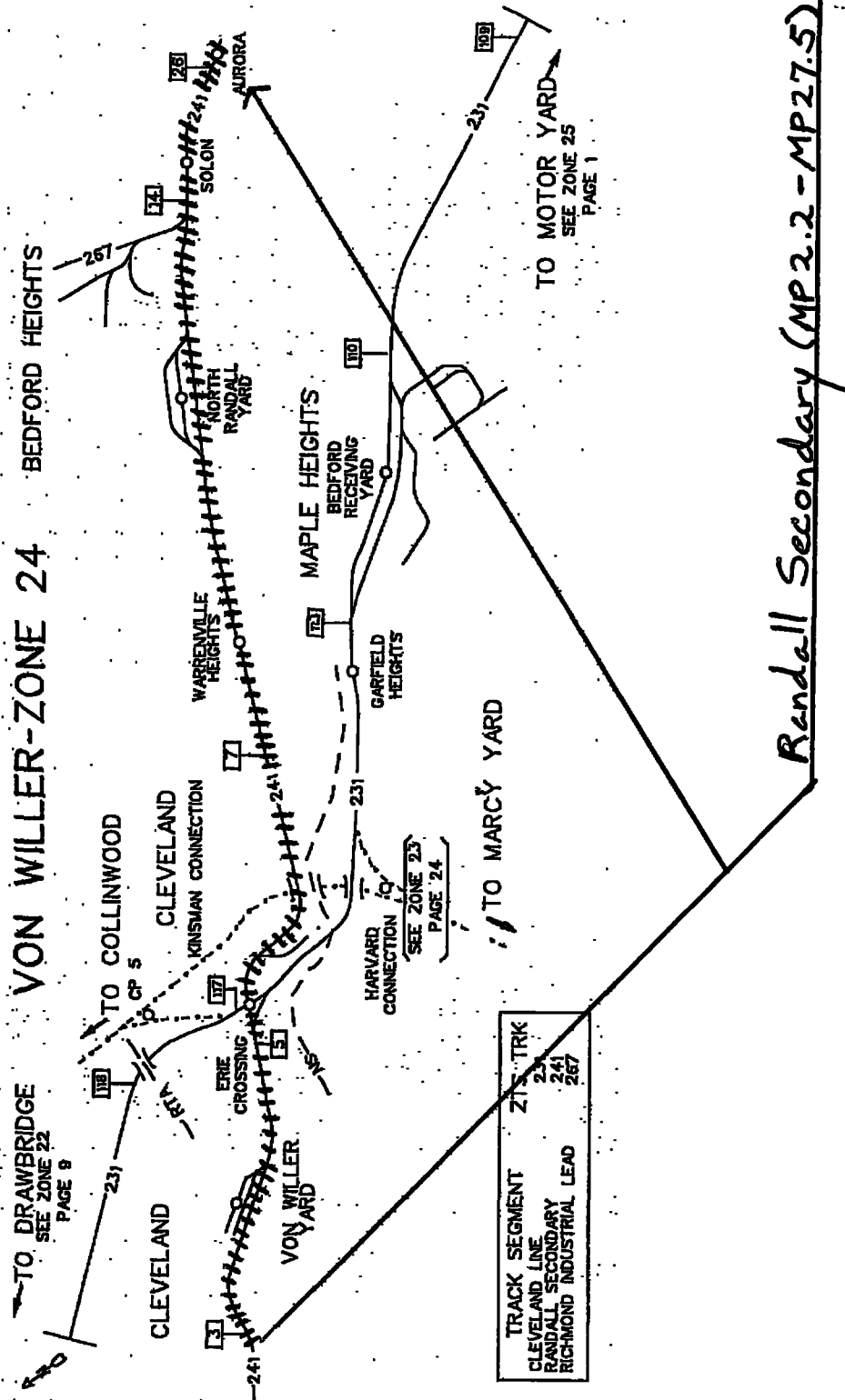
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**VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.**

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**EXHIBIT A  
MAP**





**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35251**

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**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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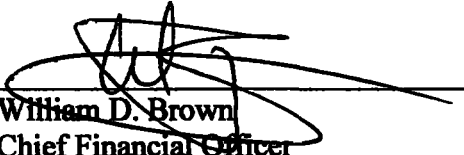
**VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.**

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**EXHIBIT B  
CERTIFICATE OF COMPLIANCE WITH 49 CFR 1150.43(g)**

## **CERTIFICATION**

**I, William D. Brown, Chief Financial Officer of Cleveland Commercial Railroad Company, LLC ("CCR"), hereby certify that CCR's projected annual revenues will not as a consequence of the transaction result in CCR becoming a Class II or Class I rail carrier so as to require processing the foregoing notice of exemption under 49 CFR 1150.45. I also hereby certify that CCR's combined annual revenues do not now exceed \$5 million, and are not projected to exceed \$5 million following consummation of the subject transaction.**

  
**William D. Brown**  
**Chief Financial Officer**  
**Cleveland Commercial Railroad Company, LLC**

**May 11, 2009**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35251**

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**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR 1150.41, ET SEQ.**

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**EXHIBIT C  
CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

**Notice of Exemption**

**STB Finance Docket No. 35251**

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**CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC  
– LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

Cleveland Commercial Railroad Company, LLC (“CCR”), an existing Class III rail carrier, has filed a verified notice of exemption to lease from Norfolk Southern Railway Company (“NSR”) and to operate a rail line owned by NSR between Milepost RH 2.2+/- at Cleveland, OH, and Milepost RH 27.5+/- at Aurora, OH (“the Line”), a total distance of approximately 25.3 route miles. The subject rail line acquisition (by lease) and operation transaction qualifies for use of the class exemption pursuant to 49 CFR 1150.41.

CCR certifies that, upon consummation of the transaction, CCR’s projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. In addition, CCR’s combined annual revenues from the operation of its existing lines and the Line that is the subject of this notice of exemption will not exceed \$5 million, and, therefore, the requirements of 49 CFR 1150.42(e) do not apply here.

The transaction is expected to be consummated on or after June 15, 2009.

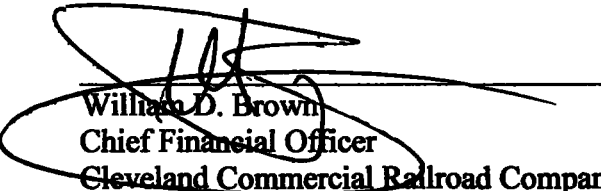
If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by June 8, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35251, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on CCR’s representative, Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.

## VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Cleveland Commercial Railroad Company, LLC, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.



William D. Brown  
Chief Financial Officer  
Cleveland Commercial Railroad Company, LLC

May 11, 2009